

August 23, 2005

City of Tacoma Draft Comments on the "Preliminary Draft of the Phase I Municipal Stormwater NPDES and State Waste Discharge General Permit"

Comment on Entire Permit

- Issue: The draft permit is very prescriptive and seems to be written for municipalities that have never had a permit before.
- Concern: Ecology should issue a more general permit that acknowledges the progress achieved by Phase I permittees in their ongoing development and implementation of their stormwater management programs. The Phase I permittees have had a permit for ten years and have made significant progress in their stormwater programs. The new permit should reflect this.

The different municipalities have different areas of program emphasis based on many factors, including the level of development, i.e., city versus county, existing infrastructure, existing Superfund sites, etc. Ecology should allow each of the Phase I permittees to develop a tailored Stormwater Management Program (SWMP) specific to their municipality for review and approval by Ecology. Because there are only a few Phase I communities, Ecology's review of individual SWMPs should not be too labor intensive. This would be a better way to support the ongoing development of each municipality's program.

Differences in new/redevelopment thresholds for Phase I and Phase II Permittees

- Issue: The Phase I permittees are required to comply with the water quality and flow control thresholds in Ecology's Stormwater Management Manual for new and redevelopment projects which are 5,000 and 10,000 square foot thresholds. The Phase II draft permit sets a minimum threshold of 1 acre to trigger the water quality and flow control requirements per the federal legislation.
- Concern: The development requirements included in the NPDES permits need to be the same for both the Phase I and Phase II communities, particularly for those that are located within the same watershed. Having the same requirements would definitely increase the effectiveness of stormwater management within a watershed. Requiring Phase I permittees to meet more stringent requirements than the Phase II permittees, undermines environmental and economic equity between neighboring communities.

A major goal of most communities is continued economic development. The management of stormwater quality and quantity is a significant cost to developers. If the stormwater requirements for the Phase II communities are less stringent than those of the Phase I communities, developers may choose to develop in Phase II communities where the cost of doing business is cheaper than in the Phase I communities.

Unrealistic deadlines – Numerous references

- Issue: The permit requirements include over 14 specific deadlines in a five year period most of which are due 12 to 24 months after the effective date of the permit and annually thereafter.
- Concern: The aggressive deadlines are front end loaded in the permit term. Neither the City nor Ecology has staff to meet these deadlines.

Items in place as of permit adoption date. - Numerous References

- Issue: There are several permit requirements that must be completed by the date of permit adoption.
- Concern: These requirements mean that the Permittees are directed to complete the work now under the extended 1995 NPDES permit. Normally this would require a permit

modification to direct the Permittees to complete such work. All references to items due as of the adoption date of the permit must be modified to incorporate reasonable time frames for due dates after issuance of the permit. Two examples of this are found in the legal and illicit discharge sections.

Staffing:

- Issue: Many additional staff will have to be hired to complete the required inspections, monitoring, mapping, record keeping and other activities required in the new permit. Tacoma believes Ecology will also need to add new people to ensure that they have staff with appropriate expertise and in adequate numbers to oversee their portion of the NPDES program.
- Concern: Tacoma estimates that many City departments will need to add new full time equivalents (FTEs) including:
 - Construction Division, 3 new FTEs,
 - Building and Land Use Services Division, 1.75 new FTE
 - Surface Water Maintenance, will need to add additional crew time for maintenance of surface water facilities
 - Science and Engineering Division is working to determine the number of additional FTEs that will be needed to do the work required by this permit including new staff for spills and complaints, inspections, enforcement, monitoring, education, training, programmatic activities, oversight of stormwater facilities, laboratory work, inspection of city facilities, etc.

With the increase in financial burden and workload to the City, in consideration of the time required to complete the budget and hiring process, Tacoma will not be able to meet the permit submittal dates. Tacoma's surface water rates are established by the City Council. The staffing and projects required to meet this permit would not be achievable under the currently established surface water rate plan.

A prescriptive permit does not necessarily lead to better water quality. Flexibility in the permit requirements would allow the permittees to tailor their program components to be more effective for their unique MS4 systems. Ecology needs to add enough adequately trained people, with appropriate expertise to adequately operate the NPDES permit program, just as the permittees have been doing and will continue to do to meet the needs of their SWMP programs. We also recommend that Ecology have people at Headquarters manage the Phase I permits and have staff at the regional offices manage the Phase II permits.

S1. Permit Coverage and Permittees

- Issue: Ecology has included the Port of Tacoma, drainage districts and other small municipalities as Secondary Permittees.
- Concern: The secondary permittees are smaller municipal entities and should have their own permit with permit requirements equivalent to the Phase I permit requirements. In addition, there are other ports besides Tacoma and Seattle, such as the Port of Olympia and the Port of Everett and other entities such as drainage districts, park districts, universities and school districts.

S5. Compliance with Standards

- Issue: Instead of having the permit issued for the whole stormwater system, it is separated into existing discharges and new discharges which include new outfalls and new sources.
- Concern: Ecology is getting away from permitting the whole system and is moving towards permitting individual pipes and outfalls. The entire municipal separate storm

sewer system must be considered the existing discharge. The permit should regulate the entire MS4 system, not individual discharges. Delete the following draft permit terms and associated definitions including:

- existing stormwater discharge
- new stormwater discharge (includes new stormwater outfall & new stormwater source)
- new stormwater outfall
- new stormwater source

S6 Monitoring:

- Issue: The permit requirements include stormwater and receiving water monitoring and BMP effectiveness monitoring to assess the effectiveness of implementing the Stormwater Management Program.
- Concern: The permit requirements should focus on the effectiveness and operational application of the Stormwater Management Program. The monitoring should focus on the MS4 system (i.e., quantitative measures of effectiveness) and not the receiving waters which have multiple pollutant sources outside the MS4 system. Qualitative measures of effectiveness also need to be monitored such as inspections, illicit connection removal, complaint and spill response, public education, redevelopment and maintenance programs.

A BMP effectiveness monitoring program should be conducted at a regional or state level, not a permittee level. A singular coordinated effort under Ecology would be the best use of Phase I and II resources to evaluate effectiveness of these BMPs.

S7C3-bii Coordination

- Issue: The permit requires written formal intergovernmental coordination.
- Concern: Requiring written formal intergovernmental coordination would require a large amount of staff time that should be more effectively spent achieving other permit requirements. No legal mechanism exists to require this type of coordination. Intergovernmental coordination may be encouraged by the permit. Tacoma already coordinates with the other Phase I municipalities on permit issues and concerns. Tacoma also cooperates with our neighboring municipalities and with the Puyallup Tribe to respond effectively to flooding issues, illicit discharges and spills, capital improvement projects, hold watershed council meetings and work on other cross boundary issues as needed.

S7C.7 and 8. Inspections of direct dischargers/industrial NPDES permitted facilities and spill response pushed to Permittees – numerous references

- Issue: Permittees become responsible for inspecting direct dischargers and industrial NPDES permitted facilities and for spill response and cleanup in the draft permit requirements.
- Concern: Ecology, not the Permittees, has the legal authority to inspect and to regulate direct dischargers and industrial NPDES permitted facilities. Enforcement of direct dischargers is less likely to be consistent if done at the local level. Permittees have and will continue to work cooperatively with Ecology on these sites, however, Ecology responsibilities should not be transferred to the Permittees via the permit.

Ecology, not the Permittees responsible for having the necessary resources to respond to large spills. Most Permittees don't have these resources and rely on Ecology for spill response. The spill response responsibility should not be transferred from Ecology to the Permittees via the permit.

S9 Reporting Requirements

- Issue: The reporting process requires that expenditure be reported including costs of the various components of the stormwater management program.
- Concern: It is currently difficult if not impossible to track program components or even NPDES permit related expenses outside of the surface water program. The proposed permit requirements would include budget and expenditure categories for permit activities across multiple Public Works, Tacoma Public Utilities and General Government offices. Tacoma needs to spend its time on other, more fruitful efforts to improve surface water quality.

The permit should require that basic budget information be included in the annual report for the reporting year as well as the proposed budget for the upcoming year. What is important is how each permittee meets its permit requirements and this is described in the annual report. As a tool to measure how each permittee is meeting the permit requirements, the actual activities completed are the most important and the actual amount spent is secondary, especially considering the difficulty of accurately collecting the actual dollars spent.